

GARY A. ANGEL, CSB NO. 70006  
FREAR STEPHEN SCHMID, CSB NO. 96089  
LAW OFFICE OF GARY A. ANGEL  
177 POST STREET, SUITE 550  
SAN FRANCISCO, CA 94108  
TELEPHONE: (415) 788-5935  
FACSIMILE: (415) 788-5958  
EMAIL: [angelgary@aol.com](mailto:angelgary@aol.com)

Attorneys for Plaintiff  
ELECTRONIC SCRIPTING PRODUCTS, INC.

Matthew C. Bernstein, Bar No. 199240  
MBernstein@perkinscoie.com  
Evan S. Day, Bar No. 283896  
EDay@perkinscoie.com  
James Hurt, Bar No. 312390  
JHurt@perkinscoie.com  
PERKINS COIE LLP  
11452 El Camino Real, Suite 300  
San Diego, CA 92130-2080  
Telephone: 858.720.5700  
Facsimile: 858.720.5799

Attorneys for Defendant  
HTC AMERICA, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ELECTRONIC SCRIPTING PRODUCTS, INC.

Plaintiff,

v.

HTC AMERICA, INC., a corporation

Defendant.

Case No. 3:17-cv-05806-RS

**STIPULATED PROTECTIVE ORDER  
FOR LITIGATION INVOLVING  
PATENTS, HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION  
AND/OR TRADE SECRETS**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective

Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the court to file material under seal.

## 2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Litigation (or Action): *Electronic Scripting Products, Inc. v. HTC America, Inc.*, Case No. 3:17-cv-05806-RS.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,

and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive "Confidential Information or Items" representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 House Counsel: attorneys who are employees of a Party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.11 Outside Counsel of Record: attorneys who are not employees of a Party to this action but are retained to represent or advise a Party to this action and have appeared in this action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party, and support staff.

2.12 Party: any Party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.14 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as

1 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as  
2 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

3 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
4 Producing Party.

5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only Protected Material  
7 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
8 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
9 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
10 However, the protections conferred by this Stipulation and Order do not cover the following  
11 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
12 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
13 publication not involving a violation of this Order, including  
14 becoming part of the public record through trial or otherwise; and (b) any information known to the  
15 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from  
16 a source who obtained the information lawfully and under no obligation of confidentiality to the  
17 Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement  
18 or order.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
21 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
22 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
23 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
24 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the  
25 time limits for filing any motions or applications for extension of time pursuant to applicable law.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
28 Non-Party that designates information or items for protection under this Order must take care to

1 limit any such designation to specific material that qualifies under the appropriate standards. To the  
2 extent it is practical to do so, the Designating Party must designate for protection only those parts of  
3 material, documents, items, or oral or written communications that qualify – so that other portions  
4 of the material, documents, items, or communications for which protection is not warranted are not  
5 swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
7 to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily  
8 encumber or retard the case development process or to impose unnecessary expenses and burdens  
9 on other parties) expose the Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it designated for  
11 protection do not qualify for protection at all or do not qualify for the level of protection initially  
12 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the  
13 mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
15 (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

16 Disclosure or Discovery

17 Material that qualifies for protection under this Order must be clearly so designated before the  
18 material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (*e.g.*, paper or electronic documents, but  
21 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
22 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
23 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected  
24 material. If only a portion or portions of the material on a page qualifies for protection, the  
25 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
26 markings in the margins) and must specify, for each portion, the level of protection being asserted.

27 A Party or Non-Party that makes original documents or materials available for inspection  
28 need not designate them for protection until after the inspecting Party has indicated which material

1 it would like copied and produced. During the inspection and before the designation, all of the  
2 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
4 copied and produced, the Producing Party must determine which documents, or portions thereof,  
5 qualify for protection under this Order. Then, before producing the specified documents, the  
6 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
8 CODE”) to each page that contains Protected Material. If only a portion or portions of the material  
9 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
10 portion(s) (*e.g.*, by making appropriate markings in the margins) and must specify, for each portion,  
11 the level of protection being asserted.

12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
13 Designating Party identify on the record, before the close of the deposition, hearing, or other  
14 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
15 impractical to identify separately each portion of testimony that is entitled to protection and it  
16 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
17 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
18 to have up to (21) days to identify the specific portions of the testimony as to which protection is  
19 sought and to specify the level of protection being asserted. Only those portions of the testimony  
20 that are appropriately designated for protection within the (21) days shall be covered by the  
21 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the  
22 deposition or up to (21) days afterwards if that period is properly invoked, that the entire transcript  
23 shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
24 ONLY.”

25 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
26 other proceeding to include Protected Material so that the other parties can ensure that only  
27 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
28 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition

1 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
2 ATTORNEYS’ EYES ONLY.”

3 Transcripts containing Protected Material shall have an obvious legend on the title page that  
4 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
5 (including line numbers as appropriate) that have been designated as Protected Material and the  
6 level of protection being asserted by the Designating Party. The Designating Party shall inform the  
7 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-  
8 day period for designation shall be treated during that period as if it had been designated “HIGHLY  
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After  
10 the expiration of that period, the transcript shall be treated only as actually designated.

11 (c) for information produced in some form other than documentary and for any other  
12 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
13 containers in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY  
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
15 CODE.” If only a portion or portions of the information or item warrant protection, the Producing  
16 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of  
17 protection being asserted.

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
19 designate qualified information or items does not, standing alone, waive the Designating Party’s  
20 right to secure protection under this Order for such material. Upon timely correction of a  
21 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
22 in accordance with the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
25 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
27 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
28 challenge a confidentiality designation by electing not to mount a challenge promptly after the

1 original designation is disclosed.

2         6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
3 by providing written notice of each designation it is challenging and describing the basis for each  
4 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
5 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
6 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
7 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
8 are not sufficient) within (14) days of the date of service of notice. In conferring, the Challenging  
9 Party must explain the basis for its belief that the confidentiality designation was not proper and  
10 must give the Designating Party an opportunity to review the designated material, to reconsider the  
11 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
12 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
13 has engaged in this meet and confer process first or establishes that the Designating Party is  
14 unwilling to participate in the meet and confer process in a timely manner.

15         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
16 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
17 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within (21) days of the  
18 initial notice of challenge or within (14) days of the parties agreeing that the meet and confer  
19 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied  
20 by a competent declaration affirming that the movant has complied with the meet and confer  
21 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a  
22 motion including the required declaration within (21) days (or (14) days, if applicable) shall  
23 automatically waive the confidentiality designation for each challenged designation. In addition, the  
24 Challenging Party may file a motion challenging a confidentiality designation at any time if there is  
25 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
26 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
27 competent declaration affirming that the movant has complied with the meet and confer  
28 requirements imposed by the preceding paragraph.



1 The burden of persuasion in any such challenge proceeding shall be on the Designating  
2 Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to harass or impose  
3 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
4 Unless the Designating Party has waived the confidentiality designation by failing to file a motion  
5 to retain confidentiality as described above, all parties shall continue to afford the material in  
6 question the level of protection to which it is entitled under the Producing Party's designation until  
7 the court rules on the challenge.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
10 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
12 the categories of persons and under the conditions described in this Order. Nothing in this  
13 Protective Order shall prevent or restrict a producing Party's own disclosure or use of its own  
14 designated material for any purpose. When the litigation has been terminated, a Receiving Party  
15 must comply with the provisions of section 15 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a location and in a  
17 secure manner that ensures that access is limited to the persons authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
20 information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
23 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
24 Bound" that is attached hereto as Exhibit A;

25 (b) the officers, directors, and employees (including House Counsel) of the  
26 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed  
27 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is

1 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
2 to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants, and  
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
6 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
8 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
9 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
10 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
11 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
12 Stipulated Protective Order.

13 (g) the author or recipient of a document containing the information or a custodian or  
14 other person who otherwise possessed or knew the information.

15 (h) Any mediator or settlement officer, and their supporting personnel, mutually  
16 agreed upon by any of the parties engaged in settlement discussions.

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
18 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered  
19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
20 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
21 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

22 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
23 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
24 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
25 Bound” that is attached hereto as Exhibit A;

26 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary  
27 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”  
28 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been

1 followed;

2 (c) the court and its personnel;

3 (d) court reporters and their staff, professional jury or trial consultants, mock jurors,  
4 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
5 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (e) the author or recipient of a document containing the information or a custodian or  
7 other person who otherwise possessed or knew the information; and

8 (f) Any mediator or settlement officer, and their supporting personnel, mutually  
9 agreed upon by any of the parties engaged in settlement discussions.

10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
12 CODE” Information or Items to Experts.

13 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating  
14 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
15 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
16 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a  
17 written request to the Designating Party that (1) identifies the general categories of “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
19 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
20 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a  
21 copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies  
22 each person or entity from whom the Expert has received compensation or funding for work in his  
23 or her areas of expertise or to whom the expert has provided professional services, including in  
24 connection with a litigation, at any time during the preceding five years, and (6) identifies (by name  
25 and number of the case, filing date, and location of court) any litigation in connection with which  
26 the Expert has offered expert testimony, including through a declaration, report, or testimony at a  
27 deposition or trial, during the preceding five years. If the expert believes any of this information at  
28 (4) - (6) is subject to a confidentiality obligation to a third Party, then the expert should provide

1 whatever information the expert believes can be disclosed without violating any confidentiality  
2 agreements, and the Party seeking to disclose the information to the expert shall be available to  
3 meet and confer with the designator regarding any such confidentiality obligations.

4 (b) A Party that makes a request and provides the information specified in the  
5 preceding respective paragraphs may disclose the subject Protected Material to the identified Expert  
6 unless, within (7) days of delivering the request, the Party receives a written objection from the  
7 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

8 (c) A Party that receives a timely written objection must meet and confer with the  
9 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
10 within (7) days of the written objection. If no agreement is reached, the Party seeking to make the  
11 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance  
12 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such  
13 motion must describe the circumstances with specificity, set forth in detail the reasons why the  
14 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would  
15 entail, and suggest any additional means that could be used to reduce that risk. In addition, any such  
16 motion must be accompanied by a competent declaration describing the parties' efforts to resolve  
17 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
18 setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

19 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of  
20 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
21 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

22 8. PROSECUTION BAR:

23 Absent written consent from the Producing Party, any individual who receives access to  
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –  
25 SOURCE CODE" information shall not be involved in the prosecution of patents or patent  
26 applications relating to the subject matter of the patent-in-suit, including without limitation the  
27 patents asserted in this action and any patent or application claiming priority to or otherwise related  
28 to the patents asserted in this action, before any foreign or domestic agency, including the United

1 States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph,  
2 “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the  
3 scope or maintenance of patent claims. To avoid any doubt, “prosecution” as used in this paragraph  
4 does not include representing a Party challenging a patent before a domestic or foreign agency  
5 (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination  
6 or *inter partes* review). These prohibitions shall not preclude counsel from participating in  
7 reexamination or *inter partes* review proceedings to challenge or defend the validity of any patent,  
8 but counsel may not participate in the drafting of any new or amended claims in any such  
9 proceedings. This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –  
10 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is  
11 first received by the affected individual and shall end two (2) years after final termination of this  
12 action.

13 9. SOURCE CODE

14 (a) To the extent production of source code becomes necessary in this case, a  
15 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if  
16 it comprises or includes confidential, proprietary or trade secret source code. Access to and review  
17 of the Source Code shall be strictly for the purpose of investigating the claims and defenses at issue  
18 in this action. No person shall review or analyze any Source Code for purposes unrelated to this  
19 action, nor may any person use any knowledge gained as a result of reviewing Source Code in this  
20 action in any other pending or future dispute, proceeding, patent prosecution, patent reexamination,  
21 or litigation.

22 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
23 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –  
24 ATTORNEYS’ EYES ONLY” information, and may be disclosed only to the individuals to whom  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as  
26 set forth in Paragraphs 7.3 and 7.4.

27 (c) Any source code produced in discovery shall be made available for  
28 inspection, in a format allowing it to be reasonably reviewed and searched, during normal business

1 hours, which for purposes of this paragraph shall be 9:00 a.m. through 6:00 p.m. on business days  
2 (*i.e.*, weekdays that are not federal holidays), or at other mutually agreeable times, at an office of  
3 the Producing Party's counsel or another mutually agreed upon location. Prior to the first inspection  
4 of any requested Source Code Material, the receiving Party shall provide twenty-one (21) days  
5 notice of the Source Code Material that it wishes to inspect. The receiving Party shall provide three  
6 (3) business days notice prior to any subsequent inspections. Unless the following conditions are  
7 waived by the Producing Party, the source code shall be made available for inspection on a secured  
8 computer in a secured room without Internet access or network access to other computers, and the  
9 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto  
10 any recordable media or recordable device. The Producing Party may visually monitor the activities  
11 of the Receiving Party's representatives during any source code review, but only to ensure that  
12 there is no unauthorized recording, copying, or transmission of the source code.

13 (d) The producing Party shall provide the receiving Party with information  
14 explaining how to start, log on to, and operate the Source Code Computer in order to access the  
15 produced Source Code Material on the Source Code Computer. The producing Party may visually  
16 monitor the activities of the receiving Party's representatives during any Source Code Material  
17 review, but only to ensure that no unauthorized electronic records of the Source Code Material and  
18 no information concerning the Source Code Material are being created or transmitted in any way;

19 e) The producing Party will produce Source Code Material in computer  
20 searchable format on the Source Code Computer as described above and will, upon request from the  
21 receiving Party, install freely available software tools on the Source Code Computer for purposes of  
22 the review (including but not limited to software to perform searches of the Source Code Material),  
23 if such tools exist and are in possession of the producing Party at the time the first request to review  
24 Source Code Material is received;

25 (f) Access to Protected Material designated "HIGHLY CONFIDENTIAL -  
26 SOURCE CODE" shall be limited to outside counsel provided that such outside counsel is not  
27 involved in competitive decision-making on behalf of a Party or a competitor of a Party and up to  
28 three (3) outside consultants or experts (*i.e.*, not existing employees or affiliates of a Party or an

1 affiliate of a Party) retained for the purpose of this litigation and approved to access such Protected  
2 Materials pursuant to paragraph 5(e) above provided that: (a) such expert or consultant is not a  
3 current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the  
4 time of retention to become an officer, director or employee of a Party or of a competitor of a Party;  
5 (b) such expert or consultant is not involved in competitive decision-making on behalf of a Party or  
6 a competitor of a Party; and (c) no unresolved objections to disclosure exist after proper notice has  
7 been given to all Parties;

8 (g) The receiving Party may, at its own expense, request that the producing Party  
9 install software on the Source Code Computer to perform searches of the Source Code Material,  
10 provided that such other software is necessary for the receiving Party to perform its review of the  
11 Source Code Material consistent with all of the protections herein. The receiving Party must  
12 provide the producing Party with removable electronic media (*e.g.*, a CD, DVD, or flash memory  
13 “stick”) containing such software tools at least fourteen (14) days in advance of the date upon  
14 which the receiving Party wishes to have the additional software available for use on the Source  
15 Code Computer. Timely requests for the installation of such search software will not be  
16 unreasonably denied so long as the receiving Party possesses an appropriate license to such  
17 software tools, and the requested search software is compatible with the operating system, and other  
18 software necessary to make the Source Code Material available for inspection, installed on the  
19 Source Code Computer, does not prevent or impede the receiving Party's access to the Source Code  
20 Material produced for inspection on the Source Code Computer, and does not side-step any of the  
21 security features enabled on the Source Code Computer (*e.g.*, enable connection and use of USB  
22 thumb drives). The receiving Party shall not erase, load, install, compile, or otherwise modify any  
23 program (or request that any other program be erased, loaded, installed, or otherwise modified by  
24 the producing Party) on the Source Code Computer without first submitting a written request and  
25 obtaining the producing Party's agreement to the request;

26 (h) The Receiving Party may request paper copies of limited portions of source  
27 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or  
28 other papers, or for deposition or trial, but shall not request paper copies for the purposes of



1 reviewing the source code other than electronically as set forth in paragraph (c) in the first instance,  
2 as the parties acknowledge and agree that the purpose of the protections herein would be frustrated  
3 by printing portions of Source Code Material for review and analysis elsewhere, and that printing is  
4 permitted solely to enable use of Source Code Material in filings, depositions, proceedings,  
5 contentions, expert reports, and related drafts and correspondence. The receiving Party's outside  
6 counsel and/or experts shall be entitled to take notes relating to the Source Code Material but may  
7 not copy the Source Code into the notes and may not take such notes electronically on the Source  
8 Code Computer itself or any other computer in the Source Code Review Room. The Producing  
9 Party shall provide all such source code in paper form including bates numbers and the label  
10 "HIGHLY CONFIDENTIAL - SOURCE CODE." In considering what is reasonable, the receiving  
11 Party shall not ask that more than 150 total pages of Source Code Material be printed from a  
12 producing Party. Any printed portion of Source Code Material that consists of more than twenty  
13 (20) pages of a continuous block of Source Code Material shall be presumed to be excessive. If the  
14 producing Party objects that the printed portions are not reasonably necessary to any case  
15 preparation activity, the producing Party shall make such objection known to the receiving Party  
16 within seven (7) days of receipt of a request for printed portions of Source Code Material. If after  
17 meeting and conferring, the producing Party and the receiving Party cannot resolve the objection  
18 (where such meet and confer need not take place in person), either Party may seek an order from the  
19 Court. Contested source code printouts need not be produced to the requesting Party until the  
20 matter is resolved by the Court. Each page of any printed copies of Source Code Material shall be  
21 printed on nonwhite, colored paper. The producing Party shall clearly label each page of any  
22 printed copies "HIGHLY CONFIDENTIAL – SOURCE CODE" and give each page a unique  
23 identification number;

24 (i) The Receiving Party shall maintain a record of any individual who has  
25 inspected any portion of the source code in electronic or paper form. Upon two (2) days advance  
26 notice to the receiving Party by the producing Party, the receiving Party shall provide a copy of this  
27 log to the producing Party. The Receiving Party shall maintain all paper copies of any printed  
28 portions of the source code in a secured, locked area. The Receiving Party shall not create any



1 electronic or other images of the paper copies and shall not convert any of the information  
2 contained in the paper copies into any electronic format. The Receiving Party shall only make  
3 additional paper copies if such additional copies are (1) necessary to prepare court filings,  
4 pleadings, or other papers (including a testifying expert's expert report), (2) necessary for  
5 deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during  
6 a deposition shall be retrieved by the Producing Party at the end of each day and must not be given  
7 to or left with a court reporter or any other unauthorized individual;

8 (j) If the receiving Party's outside counsel, consultants, or experts obtain  
9 printouts or photocopies of Source Code Material, the receiving Party shall ensure that such outside  
10 counsel, consultants, or experts keep the printouts or photocopies in a secured locked area in the  
11 offices of such outside counsel, consultants, or experts at all times when it is not in use. The  
12 receiving Party shall provide access to the printed portions of Source Code Material to no more than  
13 a total of five (5) individuals (except insofar as such code appears in any court filing or expert  
14 report);and

15 (k) A producing Party's Source Code Material may only be transported by the  
16 receiving Party at the direction of a person authorized under § 7.3 above to another person  
17 authorized under paragraph § 7.3 above, on paper mailed in a secure container with a tracking  
18 number and must require a signature by the recipient. Copies of any Source Code Material  
19 provided to the receiving Party shall not be mailed without express notice to the producing Party.  
20 The recipient must maintain and store the Source Code Material pursuant to § 9(i). Source Code  
21 Material may not be transported or transmitted electronically over a network of any kind, including  
22 a local area network, an intranet, or the Internet, except as with respect to the transmission of  
23 contentions, expert reports, sealed court filings, or any other document, which pursuant to the  
24 Court's rules, procedures, or orders must be filed or served electronically, and is at all times subject  
25 to the transport restrictions set forth herein.

26 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
27 LITIGATION

28 If a Party is served with a subpoena or a court order issued in other litigation that

1 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
3 SOURCE CODE” that Party must:

4 (a) promptly notify in writing the Designating Party. Such notification shall include a  
5 copy of the subpoena or court order;

6 (b) promptly notify in writing the Party who caused the subpoena or order to issue in  
7 the other litigation that some or all of the material covered by the subpoena or order is subject to  
8 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
10 Designating Party whose Protected Material may be affected.

11 If the Designating Party timely seeks a protective order, the Party served with the  
12 subpoena or court order shall not produce any information designated in this action as  
13 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
14 CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the  
15 subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The  
16 Designating Party shall bear the burden and expense of seeking protection in that court of its  
17 confidential material – and nothing in these provisions should be construed as authorizing or  
18 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

19 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
20 LITIGATION

21 (a) The terms of this Order are applicable to information produced by a Non-  
22 Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
23 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
24 information produced by Non-Parties in connection with this litigation is protected by the remedies  
25 and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a  
26 Non-Party from seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to produce  
28 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement

1 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

2 1. promptly notify in writing the Requesting Party and the Non-Party that some  
3 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

4 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
5 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
6 the information requested; and

7 3. make the information requested available for inspection by the Non-Party.

8 (c) If the Non-Party fails to object or seek a protective order from this court  
9 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
10 produce the Non-Party's confidential information responsive to the discovery request. If the Non-  
11 Party timely seeks a protective order, the Receiving Party shall not produce any information in its  
12 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
13 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden  
14 and expense of seeking protection in this court of its Protected Material.

15 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
17 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
18 the Receiving Party must immediately (a) notify in writing the Designating Party of the  
19 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
20 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
21 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
22 Agreement to Be Bound" that is attached hereto as Exhibit A.

23 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
24 MATERIAL

25 (a) Nothing in this Order shall require production of documents, information or  
26 other material that a Party contends is protected from disclosure by the attorney-client privilege, the  
27 work product doctrine, or other privilege, doctrine. or immunity. If documents, information or other  
28 material subject to a claim of attorney-client privilege, work product doctrine, or other privilege,

1 doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way  
2 prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or  
3 immunity. Any Party that inadvertently or unintentionally produces documents, information or other  
4 material (“Clawed-Back Materials”) it reasonably believes are protected under the attorney-client  
5 privilege, work product doctrine, or other privilege, doctrine, or immunity shall promptly notify the  
6 recipient(s) in writing.

7 (b) When a Producing Party gives notice to Receiving Parties that certain  
8 inadvertently produced material is subject to a claim of privilege or other protection, the obligations  
9 of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
10 provision is not intended to modify whatever procedure may be established in an e-discovery order  
11 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence  
12 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
13 communication or information covered by the attorney-client privilege or work product protection,  
14 the parties may incorporate their agreement in the stipulated protective order submitted to the court.

15 14. MISCELLANEOUS

16 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
17 seek its modification by the court in the future.

18 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
19 no Party waives any right it otherwise would have to object to disclosing or producing any  
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
21 Party waives any right to object on any ground to use in evidence of any of the material covered by  
22 this Protective Order.

23 [13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable  
24 laws and regulations relating to the export of technical data contained in such Protected Material,  
25 including the release of such technical data to foreign persons or nationals in the United States or  
26 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
27 data, and the Receiving Party shall take measures necessary to ensure compliance.]

28 13.4 Filing Protected Material. Without written permission from the Designating Party or

1 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
2 public record in this action any Protected Material. A Party that seeks to file under seal any  
3 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
4 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
5 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing  
6 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled  
7 to protection under the law. If a Receiving Party's request to file Protected Material under seal  
8 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the  
9 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise  
10 instructed by the court.

11 15. FINAL DISPOSITION

12 Within 60 days after the final disposition of this action, as defined in paragraph 4,  
13 each Receiving Party must return all Protected Material to the Producing Party or destroy such  
14 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
15 compilations, summaries, and any other format reproducing or capturing any of the Protected  
16 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit  
17 a written certification to the Producing Party (and, if not the same person or entity, to the  
18 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the  
19 Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not  
20 retained any copies, abstracts, compilations, summaries or any other format reproducing or  
21 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
22 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
23 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
24 product, and consultant and expert work product, even if such materials contain Protected Material.  
25 Any such archival copies that contain or constitute Protected Material remain subject to this  
26 Protective Order as set forth in Section 4 (DURATION).

27 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**  
28

1 DATED: March 16, 2020

2  
3 **PERKINS COIE LLP**

**LAW OFFICE OF GARY A. ANGEL**

4  
5 By: /s/ Evan S. Day

6 Matthew C. Bernstein, Bar No. 199240  
7 MBernstein@perkinscoie.com  
8 Evan S. Day, Bar No. 283896  
9 EDay@perkinscoie.com  
10 Ruchika Verma, Bar No. 311279  
11 RVerma@perkinscoie.com  
12 James Young Hurt, Bar No. 312390  
13 JHurt@perkinscoie.com  
14 11452 El Camino Real, Suite 300  
15 San Diego, CA 92130-2594  
16 Telephone: 858.720.5700  
17 Facsimile: 858.720.5799

18 Attorneys for Defendant  
19 HTC AMERICA, INC.

By: /s/ Frear Stephen Schmid

Gary A. Angel, CSB No. 70006  
angelgary@aol.com  
Frear Stephen Schmid, CSB No. 96089  
frearschmid@aol.com  
177 Post Street, Suite 550  
San Francisco, CA 94108  
Telephone: 415.788.5935  
Facsimile: 415.788.5958

Attorneys for Plaintiff  
ELECTRONIC SCRIPTING PRODUCTS, INC.

20 **[PROPOSED] ORDER**

21 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

22 DATED: March 18, 2020

By: 

THE HONORABLE ROBERT M. ILLMAN  
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in  
5 its entirety and understand the Stipulated Protective Order that was issued by the United States  
6 District Court for the Northern District of California on [date] in the case of \_\_\_\_\_ **[insert**  
7 **formal name of the case and the number and initials assigned to it by the court]**. I agree to  
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand  
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
12 compliance with the provisions of this Order.  
13

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
16 Order, even if such enforcement proceedings occur after termination of this action.  
17

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone number]  
20 as my California agent for service of process in connection with this action or any proceedings  
21 related to enforcement of this Stipulated Protective Order.  
22

23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_

25 Printed name: \_\_\_\_\_  
26 [printed name]

27 Signature: \_\_\_\_\_  
28 [signature]